IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5652 OF 2003

Smt. Sadhna Rajan Kamble ... Petitioner

Versus

The President, Jai Prakash Education Society and Ors. ... Respondents.

Ms. Prabha U. Badadare for the petitioner.

Ms. S.V.Deshmukh for respondent No.1.

Mr. V.P. Malvankar, Assistant Government Pleader, for respondent No.3.

Mr. R.G. Ketkar for respondent No.4.

CORAM: **KSHITIJ R. VYAS, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **MARCH 07, 2006**.

P.C.

Rule. Learned counsel appearing on behalf of the respondents waive service. By consent of the learned counsel appearing for the parties, matter is taken up for hearing and final disposal.

2. The petitioner is M.A. in Hindi and B.Ed. She belongs to Scheduled Caste (Mahar). By this petition, the petitioner is seeking

directions to respondent Nos. 1 to 3 to declare the petitioner as a full time Hindi teacher on a permanent post right from her initial appointment i.e. from 16-7-1991 or any other date and to direct the respondent management to give her all monetary and other service benefits.

3. Respondent No.1 is the educational institution which runs a College in the name and style of Dr. Babasaheb Ambedkar Mahavidhyalaya. In the year 1990-91, respondent No.1 published an advertisement in a local newspaper daily “Kesari” dated 7th June, 1990, inviting applications for the post of part time Hindi teacher to teach Junior College for the said academic year and in future it was likely to be converted into full time as a permanent post. The said post of part time Hindi teacher was reserved for Scheduled Tribe and D.T. and Nomadic Tribe and other Backward Classes. It was clarified that if candidates from the said category were not available, then candidates from Scheduled Caste would be considered. The petitioner being qualified for the said post applied to respondent No.1. It appears that respondent No.4 possessing qualification of M.A. in Hindi and B.Ed. also applied from open category to the said post. It further appears that in the interview, respondent Nos.1 and 2 could not find suitable

candidates for the post in question from Scheduled Tribe and D.T. and Nomadic Tribe and other Backward Classes. Petitioner passed interview successfully and came to be selected.

4. The State Government, taking into consideration the difficulties faced by educational institutions issued a Government Resolution on 27th March, 1991, to the effect that when a candidate from a particular category is not available, candidates from Other Backward Classes, etc. will be considered. Accordingly, respondent No.1 has selected the petitioner as she belongs to Scheduled Caste and appointed vide appointment letter dated 16th July, 1991. It is the grievance of the petitioner that as per the advertisement, the petitioner could have been appointed as a full time Hindi teacher. She was appointed vide appointment letter dated 16th July, 1991 as a part time Hindi teacher which was thus in contravention with the advertisement and requirement. Not only that, on the same day, respondent Nos. 1 and 2 selected respondent No.4 as a full time Hindi teacher.

5. It is the case of the petitioner that as she was in need of service for survival, she took charge as a part time Hindi teacher on 14th August, 1991 and thereafter started serving on the said post. The

petitioner, however, with a view to ventilate her grievances, addressed a communication dated 20th November, 1991, to respondent No.3 and also to the Director of Social Welfare.

6. On 29th February, 1992, respondent No.1 after realizing the mistake /mischief committed by the then Principal communicated to respondent No.2, then principal, to rectify the mistake and revoke and cancel appointment of respondent No.4 and appoint petitioner as a full time Hindi teacher and send it for approval from respondent No.3. It appears that no action was taken by respondent No.2. Respondent No.1, however, on 14th May, 1992, again published an advertisement in a local newspaper daily “Sakal” inviting applications for the post of full time Hindi teacher to teach Junior College. The said post of full time Hindi teacher was reserved for Scheduled Tribes and D.T. and Nomadic Tribe and Other Backward Classes. It was also clarified that if candidates from the said category were not available, then candidates from Scheduled Caste will be considered. The petitioner being qualified for the said post applied to respondent No.1, prayed for her appointment as a full time Hindi teacher. The petitioner passed the interview successfully and was selected on 8th July, 1992, as respondent Nos.1 and 2 could not get a candidate from the categories

so advertised. On the same day, respondent Nos. 1 and 2 also selected and appointed respondent No.4 as a part time Hindi teacher.

7. It appears that respondent No.1 again given an advertisement on 28th June, 1993, in the local newspaper “Pudhari” inviting applications for the post of full time Hindi teacher to teach in Junior College. It was also reserved for Scheduled Tribes wherein it was also clarified that if the candidates from S.T. were not available, then candidates from S.C. would be considered. The petitioner being qualified for the said post applied to Respondent No.1 and prayed for her appointment as a full time Hindi teacher. The petitioner cleared the interview successfully and was selected as respondent Nos. 1 and 2 could not get a candidate from the categories referred to above. On 7th July, 1993, the petitioner was appointed as a full time Hindi teacher.

8. It is the case of the petitioner that right from day one i.e. when the petitioner was called for interview in pursuance of the advertisement dated 7th June, 1990, respondent Nos. 1 and 2 were determined to appoint respondent No.4 to the post in question. It is alleged that respondent No.4 is the wife of then Principal of Junior College viz. Shri Shamrao Patil. Because of their thick relationship,

respondent Nos.1 and 2 decided to appoint respondent No.4 on the post in question. It is with a view to fill up the said post, respondent Nos.1 and 2 made a show of issuing advertisement, calling applications and holding interviews. Therefore, even though petitioner was selected as a full time Hindi teacher, she was initially appointed as a part time Hindi teacher and respondent No.4 was selected as full time Hindi teacher in contravention of the advertisement and the requirements. It is at the intervention of respondent No.3 and on his direction, the petitioner was appointed as full time Hindi teacher. It is further alleged by the petitioner that even after her second selection as a full time Hindi teacher, respondent Nos. 1 and 2 were being interested in respondent No.4 by maneuvering and adjusting workload in favour of respondent No.4 in such a way that respondent No.4 was given workload of part time Hindi teacher and six periods of other subjects and a proposal was sent to respondent No.3 for approval of respondent No.4 as a full time teacher but not as a full time Hindi teacher.

9. As per the allegations of the petitioner, even after her selection in pursuance of the third interview held in the year 1993, respondent Nos. 1 and 2, in order to accommodate respondent No.4,

distributed workload in such a way that respondent No.4 was given workload of 23 periods and respondent No.4 was appointed on probation of two years as a full time Hindi teacher. It is the case of the petitioner that in order to defeat the rights and claims of petitioner and to facilitate permanency in service to respondent No.4, respondent Nos. 1 and 2 had made all the aforesaid manipulations.

10. The Respondent No.1 again published an advertisement in a local newspaper daily “Pudhari” on 30th May, 1994, inviting applications for the post of full time Hindi teacher to teach Junior College. The said post of full time Hindi teacher was reserved for Scheduled Tribes and it was clarified that if candidates from said category were not available, then candidates from Scheduled Caste will be considered. The petitioner again applied for the same and was selected. The petitioner was appointed vide appointment letter dated 19th June, 1994 as a full time Hindi teacher. It appears that on 9th December, 1994, the petitioner preferred an application to respondent No.3 and made grievance about the appointments and requested for granting approval to her posting. The said request of the petitioner was turned down by respondent No.3 vide his letter dated 22nd December,1994, on the ground that the said application ought to have been sent through

respondent No.2. On 29th December, 1994, the petitioner sent an application to respondent No. 3 through respondent No.2 requesting for giving priority to her in allotment of workload and for approval. On 23rd January, 1995, the petitioner sent one more reminder to respondent No.3. Respondent No.3, it appears, did not take cognizance of her complaints but granted approval to petitioner as a full time Hindi teacher from 31st July, 1993 upto end of 1993-94 (temporary).

11. It is the grievance of the petitioner that Respondent Nos. 1 to 3 deviated from their original requirement of appointing a full time Hindi teacher and from giving advertisement, issuing appointment letter and also converted the said post as an additional post. By adopting these tactics, respondent Nos. 1 to 3 gave approval to respondent No.4 as a full time Hindi teacher on the first vacant post for 1994-95.

12. Being aggrieved by the aforesaid action of Respondent Nos. 1 to 3, the petitioner preferred an appeal being Appeal No. 125 of 1995 before the Presiding Officer, School Tribunal, Kolhapur. On 2nd March, 2001, the Presiding Officer, School tribunal, Kolhapur, dismissed the appeal on the grounds of limitation and jurisdiction.

Against the said decision, the petitioner has approached this Court by filing a Writ Petition, being Writ Petition No. 4702 of 2002, which was withdrawn on 3rd September, 2002. The present petition is filed for the reliefs stated above.

13. We have heard the learned counsel appearing for the parties at length.

14. In view of the peculiar facts and circumstances, it is clear and manifest that the petitioner has suffered injustice not once but thrice. Admittedly, the post of full time Hindi teacher in Junior College was reserved for Scheduled Tribe and D.T. and Nomadic Tribe and other Backward Classes. If there is non-availability of candidates from the S.T. category, candidates from the S.C. category are required to be considered. There is no dispute that the petitioner being a S.C. candidate fulfils the requirement of the advertisement. The petitioner was accordingly selected and was given appointment. The post being in the category of full time, the petitioner could not have been appointed as a part timer. Not only that, respondent No.4 could not have been made permanent as full time Hindi teacher as she was from the open category. The intentions are clear and manifest in the sense that

respondent Nos.1 and 2 on one pretext or the other had to give advertisement for the very post on three occasions.

15. Even though the petitioner was selected on all occasions, respondent Nos. 1 to 3 were successful enough to accommodate respondent No.4 and were further successful to make her permanent as full time Hindi teacher. It is unfortunate that the petitioner being a S.C. candidate is denied her legitimate claim and has suffered injustice right from 1991.

16. The learned counsel appearing for respondent No.1 could not justify the stand taken by them against the petitioner. The fact that the said respondents have failed to file their reply affidavit is suggestive of the fact that they have no say in the matter. The affidavit filed by respondent No.3, Assistant Director of Education, virtually supports the case of the petitioner. Therefore, it is not necessary for us to reproduce the contents of the affidavit. Respondent No.4, however, has seriously disputed the claim of the petitioner to the post of full time Hindi teacher. The learned counsel appearing for respondent No.1 invited our attention to the advertisement dated 27th May, 1986 issued by respondent Nos. 1 and 2 for the post of full time Hindi teacher and

also showed us the various appointment orders dated 10th July, 1986, 23rd April, 1987, 5th July, 1990, 16th July, 1991 and 8th July, 1992. On a perusal of the above appointment orders, it is clear that the appointment was for a period of one year and that too on temporary basis. Vide order dated 8th July, 1992, respondent No.4 has been appointed for two academic years. However, in our opinion, the order dated 5th July, 1992 will not be of any help to respondent No.4 in view of the fact that the petitioner as well as respondent No.4 both applied pursuant to the advertisement dated 27th June, 1991, for the post of full time Hindi teacher to teach Junior College. As stated above, the said post was a full time Hindi teacher and was reserved for Scheduled Tribe and D.T. and Nomadic Tribe and other Backward Classes and in the absence of any candidates from the said categories, the candidates from S.C. would be considered. The petitioner being the only candidate of S.C. category available was rightly selected and, therefore, respondent No.4 could not have been selected for the post in question in preference to the claim of the petitioner. Merely because respondent No.4, who was working as Hindi teacher with respondent Nos. 1 and 2 prior to 27th June, 1991, could not become eligible to get permanency rights as she worked on the post in question temporarily. Since the post in question is meant for a reserved category,

respondent No.4 would not be justified to have a claim on the said post. We, however, make it clear that the claim of respondent No.4 on the category from open category candidates may be considered by respondent No.2, as and when she applies for the same, provided the post is available.

17. With these observations, we allow this petition and direct respondent Nos. 1 to 3 to reinstate the petitioner as a full time Hindi teacher in the respondent No.2 College . It is further directed that the petitioner's services shall be treated as a full time Hindi teacher from the date of her first appointment. However, considering the facts and circumstances, while granting continuity in service, we direct respondent No.2 to pay all monetary benefits from the date of filing of the petition, after deducting monetary benefits already paid. Considering the facts and circumstances of the case, respondent No.1 is directed to pay to the petitioner the difference of pay and allowances from the date of filing of the petition i.e. 2nd May, 2003 till date. Rule is made absolute accordingly with no order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.